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October 2, 2008

10/2/08

VIA FACSIMILE

The Honorable Debra Freeman  
 United States Magistrate Judge  
 United States District Court  
 Southern District of New York  
 500 Pearl Street  
 New York, New York 10007

MEMO ENDORSED

MICROFILMED  
OCT - 3 2008 -12 PM

Re: *Silver v. Lavandeira*  
Case No.: 08 CV6522 (JSR) (DCF)

Dear Judge Freeman:

This firm represents Defendant in the above referenced matter. I write pursuant to Rule 6 of the Federal Rules of Civil Procedure to request an extension of Defendant's time to submit his reply in further support of his motion to dismiss and to oppose Plaintiff's motion for discovery. This request is necessitated by the fact that Plaintiff has served us with voluminous materials five days after her deadline to serve opposition papers elapsed.

This Court is well aware that Chambers, Ms. Silver and I have spent a great deal of time in late August negotiating a briefing schedule on Defendant's motion to dismiss. Pursuant to that schedule, Plaintiff's opposition was due on September 26<sup>th</sup> and Defendant's reply on October 10<sup>th</sup>. During those negotiations, I repeatedly told Plaintiff and the Court that I would be observing Yom Kippur on October 8<sup>th</sup> and 9<sup>th</sup> and then I would be in Italy from October 10<sup>th</sup> to the 18<sup>th</sup>.

Since the time that Defendant filed his motion, Plaintiff filed a separate motion seeking discovery with many allegations, all of them false, but which still need to be addressed. Worse, I just received a "supplemental" declaration from Plaintiff, dated yesterday which also contains many allegations and voluminous exhibits. This declaration is not in support of her motion, but rather is in further opposition to Defendant's motion. It is grossly unfair for Plaintiff to serve me

10/2/08

Judge Freeman

The Honorable Debra Freeman  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
October 2, 2008  
Page 2 of 2

SO ORDERED: DATE: 10/2/08  
..... *Debra Freeman* .....  
DEBRA FREEMAN  
UNITED STATES MAGISTRATE JUDGE

with a substantial filing on October 1<sup>st</sup> – **five days after her due date** – knowing that I would not be in the office (yesterday was Rosh Hashanah) and knowing that I would be unable to work after this coming Tuesday.

I know that because the Plaintiff is *pro se*, the Court will be reluctant to strike materials she has submitted, even if they are untimely. Accordingly, and out of fairness, I am asking that the Court direct the Plaintiff not to submit anything else in opposition to Defendant's motion and that Defendant be given until October 24, 2008 to submit our reply and respond to her motion. These additional days will give me a little time after I return to be able to prepare these papers.

I respectfully submit that Plaintiff has no grounds to complain because she was given clear deadlines and she has created this situation. I would be within my rights to ask that her untimely papers be stricken, but all I am requesting is a reasonable extension, given a long planned trip that I told her about more than two months ago.

Respectfully submitted,

*Jeffrey M. Eilender*  
Jeffrey M. Eilender

JME/gc

cc: (via e-mail)  
Elizabeth Silver, Plaintiff *Pro Se*